

INTERGOVERNMENTAL AGREEMENT

AMONG
THE STATE OF ARIZONA
AND
GREATER YUMA PORT AUTHORITY, INC.
AND
THE CITY OF SAN LUIS

THIS AGREEMENT is entered into this date August 1st, 2007, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "ADOT" or "State") and GREATER YUMA PORT AUTHORITY, an Arizona nonprofit corporation ("GYPA"), and the CITY OF SAN LUIS ("City"), collectively referred to as "Parties".

I. RECITALS

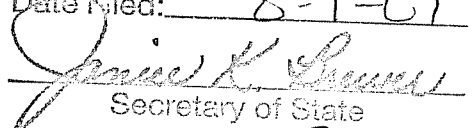

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The GYPA is empowered as an Arizona nonprofit corporation, organized and existing under Arizona law, to enter into this Agreement, and, as authorized by appropriate action of the governing board of the corporation.

3. The City of San Luis is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the City.

4. The Parties desire to enter into this Agreement for the design, construction, maintenance and operation of new water and sanitary sewer lines across the State weight and truck safety inspection facility at the San Luis II commercial port-of-entry. The lines will serve the State's inspection facility and the GYPA's developments to the west and east of the facility and will be located along the northern and eastern boundaries of the facility within a 20 ft. utility corridor to be provided by the State through an Encroachment Permit to the GYPA and City of San Luis, Arizona. The State will be responsible for a pro rata share of the overall construction costs for these lines and will be provided with connections to these lines at the west and east sides of the facility. The State, GYPA and City desire to define their respective responsibilities for the design, construction, maintenance and operation of these new utility lines hereinafter referred to as the "Project".

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

NO. 290946
Filed with the Secretary of State
Date Filed: 8-1-07

Secretary of State
By: 

II. SCOPE OF WORK

1. The ADOT shall:

- a. Review the design documents and provide comments as appropriate.
- b. Issue an Encroachment Permit for the utility corridor to the City of San Luis.
- c. Be responsible for any contractor claims for extra compensation due to delays or whatever reason attributable to the State.
- d. After 30 days of receipt of an invoice from the GYPA, remit to the GYPA for the reasonable direct actual cost of the Project, currently estimated at \$66,000.00.

2. The GYPA shall:

- a. Prepare and provide design plans, specifications and other such documents and services required for construction bidding and construction of the Project, and submit same to the ADOT for concurrence.
- b. Apply and accept an encroachment permit for the utility corridor from ADOT Yuma District Permit Section.
- c. Call for bids, award one or more construction contracts to accomplish the Project, administer it and make all payments to the contractor. Confer with, and obtain written consent from the State and City on any Project related contract modifications. Be responsible for any contractor claims for extra compensation attributable to the GYPA.
- d. Invoice the State for the reasonable direct actual cost of the Project, with no profit or fee, in an amount currently estimated at \$66,000.00.

3. The City shall:

- a. Review the design documents and provide comments as appropriate.
- b. Apply and accept an encroachment permit for the utility corridor from ADOT Yuma District Permit Section.
- c. Be responsible for any contractor claims for extra compensation due to delays or whatever reason attributable to the City.
- d. Upon satisfactory completion of the construction of the water and sanitary sewer lines, the City will take ownership of the lines and will operate and maintain the water and sanitary sewer lines within the inspection facility for the benefit of the State and the GYPA.

III. MISCELLANEOUS PROVISIONS

1. The Recitals to this Agreement are incorporated herein. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of construction of the Project and related reimbursements. The GYPA assumes full responsibility for the design, plans, specification, reports, and the engineering in connection therewith of any design contractor cost over-runs and design claims.

2. Each party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorneys' fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person, (including death), or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct or other fault of the indemnitor, its officers, officials, agents, employees or volunteers.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

6. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

7. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 616E
Phoenix, Arizona 85007
(602) 712-7525
(602) 712-7424 Fax

Attn: James P. Chessum,
Administrator
Greater Yuma Port Authority,
502 S. Orange Avenue
Yuma, Arizona 85364
Phone # (928) 783-8911
Fax # (928) 329-1674
jchessum@gypa.org

City of San Luis
767 North First Avenue
San Luis, Arizona 85349
Phone # (928) 341-8520

8. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

9. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.

10. In accordance with Arizona Revised Statutes § 11-952 (D), as to the State and City, and in accordance with Title 10 of the Arizona Revised Statutes as to the GYPA, attached hereto and incorporated herein is the written determination of each party's legal counsel, and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.


11. Counterparts. This Agreement may be executed in counterparts, each of which, when taken together, shall be deemed an original and constitute one and the same Agreement, which shall be binding and effective.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

GREATER YUMA PORT AUTHORITY

ARIZONA DEPARTMENT OF TRANSPORTATION


By 
GARY MAGRINO
Chairman

By 
STACEY K. STANTON
Director, Motor Vehicle Division

CITY OF SAN LUIS

First draft March 13, 2007-ly
Revised with Jim Redpaths comments April 2, 2007-ly
Revised April 17, 2007-ly
Revised April 26th, 2007-ly
Revised May 3, 2007-ly
FINAL Draft per GYPA and AG 6/8/07 ghc

By 
JUAN C. ESCAMILLA
Mayor

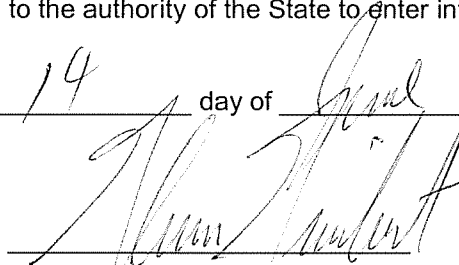
By 
City Clerk

ATTORNEY APPROVAL FORM FOR THE
CITY OF SAN LUIS

I have reviewed the above referenced Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, the GYPA, and the CITY, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954, and declare this Agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 14 day of April, 2007.



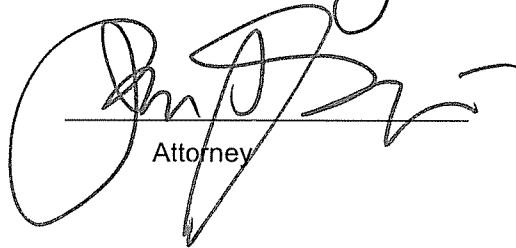
City Attorney

ATTORNEY APPROVAL FORM FOR THE
GREATER YUMA PORT AUTHORITY, INC.


I have reviewed the above referenced Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, the GYPA, and the CITY, and declare this Agreement to be in proper form and within the powers and authority granted to the GYPA under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 13th day of June, 2007.



Attorney

TERRY GODDARD Attorney General	 OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA	CIVIL DIVISION TRANSPORTATION SECTION Direct Line: 602.542.8837
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INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR07-0461-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

Date: 24 July 2007

Terry Goddard
ATTORNEY GENERAL


James R. Redpath
Assistant Attorney General
Transportation Section

JRR:djd:998729